JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

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EVIDENCE.

State v. *McNeill,* N. Car., 109 S. E. 84. *Admissibility of evidence of general reputation of defendant's house as a place for illicit sale of whiskey.*

In a prosecution for possessing liquors for sale, where defendant's witnesses testified he was away from home when whiskey and jugs were found on his premises, and that they had been brought there without his connivance, evidence as to general reputation of defendant's house as a place for illicit sale of whiskey, though incompetent to establish defendant's reputation, was a circumstance which, under C. S. Sec. 3383, authorizing proof of violations of Section 3378, relative to handling liquor for gain, by circumstantial evidence, was admissible in corroboration of inference arising from the finding of the liquor, and the weight of the testimony was for the jury.

Hoke and Stacy, JJ., dissenting.

FORMER JEOPARDY.

State v. *Corbett,* S. Car., 109 S. E. 133. *Effect of plea of former jeopardy where defendant separately indicted for killing three persons in one affray and acquitted on trial of one.*

Where accused, having killed three persons in one affray, was separately indicted for murder for each killing, and, on trial upon one indictment, was acquitted, the allegation in his plea of former acquittal to another of the indictments "that the several shots fired by him from the said revolver at said persons at said time and place . . . were actuated and moved by the same identical impulse, and constituted one single act of volition," was a mere characterization—an inference from the alleged facts—so that demurrer to the plea did not admit that the three homicides were a single act on his part.

Where accused, having killed three persons in one affray, was separately indicted for murder for each killing, and, on trial upon one indictment, was acquitted, such acquittal was not a bar to prosecution upon one of the other indictments, the accused having committed a separate act against each one killed, nor could accused's claim that his act constituted but one offense be sustained even if the three homicides were a single act on his part, as more than one offense may follow from a single act, and, in any event, Const., Art. 1, Sec. 17, prohibits double jeopardy "for the same offense," and not for the same act.

Watts, J., dissenting.

HUSBAND AND WIFE.

State v. *Falkner,* N. Car., 108 S. E. 756. *Willful abandonment: burden of proof.*

C. S. Sec. 4447, punishing willful abandonment of wife or children, being a penal statute, must be strictly construed, and the court cannot extend its terms by implication to include cases not clearly within its meaning.

In prosecution under C. S. Sec. 4447, for wife abandonment, instruction that, if abandonment was caused by infidelity of the wife or any just cause, the jury should acquit, and that "the burden being on defendant to satisfy you of the adultery of the wife not beyond reasonable doubt nor by the great weight of the evidence, but simply to your satisfaction," etc., was misleading and erroneous, though the court instructed that the burden was on the state to satisfy them from all the evidence beyond a reasonable doubt that defendant willfully abandoned his wife without providing adequate support.

Clark, C. J., dissenting.

INSTRUCTIONS.

State v. *Long,* W. Va., 108 S. E. 279. *"Reasonable doubt"—created by ingenuity of counsel.*

An instruction in a trial for felony, which tells the jury that if a reasonable doubt of the guilt of the accused is raised in their minds by the evidence itself, or by the ingenuity of counsel, they should find the accused not guilty, is erroneous, and should be refused, the court saying:

"The instruction relates to the ingenuity of counsel. Counsel in conducting trials often ingenuously propound questions and present improper evidence, and, although ruled out, it leaves its impression, which is sometimes difficult for a jury to discard. Counsel in argument will often ingenuously and disingenuously make statements of fact not warranted by the testimony. It would be traveling afar from the beaten paths to instruct jurors that they may base a reasonable doubt upon ingenuity of counsel in the conduct of the trial."

JURISDICTION.

State v. *Swygert,* S. Car., 108 S. E. 261. *Where statute permits trial in either of two counties, court of first one to act obtains exclusive jurisdiction.*

Under Cr. Code 1912, Sec. 147, providing that, where one is wounded in one county and dies in another, indictment in either of the person causing it shall be good, and he shall be tried in the county where the indictment is found, the court of the county where the wound was inflicted having first assumed exclusive jurisdiction of the case, accused cannot be proceeded against in the county where the person died.

LARCENY.

People v. *Spencer,* Calif. App., 201 Pac. 130. *Illicit liquor as subject of larceny.*

Intoxicating liquor manufactured for beverage purposes after Const. U. S. Amend. 18 has taken effect cannot be the subject of larceny, since such liquor cannot in legal contemplation be property, inasmuch as there cannot be ownership thereof, in view of Volstead Act of the United States and Civ. Code, Sec. 654.

One who entered building with the intent to take intoxicating liquor which had been manufactured for beverage purposes since Const. U. S. Amend. 18 has taken effect is not guilty of burglary, since the liquor is not in legal contempla-

tion property, inasmuch as it is not subject to ownership, in view of the Volstead Act of the United States and Civ. Code, Sec. 654.

MARTIAL LAW.

Ex parte Lavinder, W. Va., 108 S. E. 428. *When effective.*

The existence of war between a state and citizens of a portion of its territory, arising out of an insurrection, does not of itself inaugurate martial law in such territory, nor does the proclamation thereof by the governor put it in operation. Nor does the fact, nor the proclamation, nor both, afford any constitutional basis for a proclamation of martial law in such territory, unless nor until a military force is put into the field for administration and enforcement thereof.

In such case, it is not within the constitutional power of the governor to inaugurate and enforce martial law within such territory by means of the civil authorities acting under the direction of himself and a military officer sent into it by him for the purpose. A mere military coloring of administration is insufficient.

Miller, J., dissenting.

PARENT AND CHILD.

People v. *Clark,* Calif. App., 201 Pac. 465. *Whether father criminally liable for failure to provide for child cared for by wife's parents.*

A father is not criminally liable under Pen. Code, Sec. 270, for failure to provide clothing, food, and medical attention to a child, where the child was being supplied as far as was necessary by the wife's parents, to whose house she had taken the child upon separating from her husband, without demand on father for financial aid in the matter of support.

SENTENCE.

Richardson v. *Commonwealth,* Va., 109 S. E. 460. *Effect of bargain by prosecuting attorney or trial judge with defendant regarding sentence.*

The judge of a trial court may not enter into a binding agreement with a prisoner to excuse him forever from the penalties of his crime if he pleads guilty by giving him a suspended sentence, the purpose of a suspended sentence being to afford accused only an opportunity to repent and reform; nor can attorneys for the commonwealth make a contract with an accused which will bind the trial judge, and one who pleads guilty can thereafter only ask for mercy.

TRIAL.

State v. Turner, S. Car., 109 S. E. 119. *Whether trial judge's comment on expert opinion prejudicial.*

Where a witness had qualified as an expert on ballistics, he was entitled to give his opinion, and a remark of the trial judge that "I think the rapidity with which a projectile would fly through the air would depend on the force behind it, and if he knows how that pistol was discharged, he can testify. I think he is talking through his hat," was prejudicial as tending to discredit the evidence of the witness and invading the province of the jury.

State v. *Young,* Kans., 200 Pac. 285. *Coercion of verdict.*

It is held that no sufficient reason for setting aside a verdict of guilty in a murder case upon the ground that it was coerced by the conduct of the judge is shown by proceedings thus summarized: At 4:45 p. m. of Saturday, the second day of the jury's deliberation, the judge, after being told by the foreman that he believed an agreement was not far off, announced that a separation until Monday morning would be allowed. Upon a suggestion of the defendant's counsel that the jury be sent out again the judge stated that he was going to take a train in 25 minutes, but would give the jury time for another ballot. At 4:54 the verdict was returned.